

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

STUDIO360, Inc.  
PLAINTIFF,

vs.

CONVENTIONS.NET,  
DEFENDANT.

CASE No.:

COMPLAINT

[JURY DEMANDED]



Plaintiff Studio360, Inc. alleges:

**09-CV-01652-CMP**

INTRODUCTION

1. This action results from defendant's willful infringement of plaintiff's copyrights to literary works. Defendant extensively copied literary works from plaintiff's web sites and reproduced them verbatim on its web sites without plaintiff's permission to do so. Defendant intentionally

COMPLAINT - 1

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4 did this in order to sell goods and service, promote defendant's web sites and increase internet  
5 traffic to its sites - as of the filing of this complaint, plaintiff has discovered over 100 instances  
6 of direct infringement of its works by defendant.  
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8 2. This action is comprised of claims arising under the Copyright Act of 1976, 17 U.S.C.A.  
9 §101, *et seq.*, and state law causes of action for unjust enrichment, unfair competition and breach  
10 of contract.  
11

12 JURISDICTION AND VENUE

13 3. This court has original jurisdiction over civil claims arising under the Constitution under 28  
14 U.S.C. §1331; federal question jurisdiction over all claims arising under the Copyright Act under  
15 28 U.S.C 1338(a); jurisdiction over the unfair competition claims under 28 U.S.C. §1338(b);  
16 jurisdiction based upon the diversity of citizenship of the parties under 28 U.S.C. §1332 as the  
17 amount in controversy is greater than \$75,000 and plaintiff is a citizen of Washington and  
18 defendant is a citizen of a state other than Washington (to wit, Florida); and supplemental  
19 jurisdiction over the pendent claims under 29 U.S.C. § 1367(a).  
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4 4. Venue is proper pursuant to 28 U.S.C. §1391 and §1400(a) as defendant is subject to  
5 personal jurisdiction in the district, a substantial part of the events or omissions giving rise to the  
6 claim occurred in this jurisdiction including but not limited to contracting for goods and services  
7 within the state, and all of plaintiff's copyrightable property that is the subject of the action is  
8 sited in this jurisdiction.  
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11 5. Defendant is subject to personal jurisdiction in this forum.  
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PARTIES

14 6. Plaintiff Studio360, Inc. is a Washington corporation.  
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17 7. Defendant Conventions.net is believed to be a Florida corporation.  
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FACTS

19 8. Plaintiff Studio360 is a Seattle company that produces web sites containing information  
20 about travel destinations under the trade name Destination360.com. Its staff includes  
21 professional photographers, travel writers and web developers. There is a Destination360 page  
22 for hundreds of travel destinations and their popularity generates significant internet traffic,  
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generally resulting from a Google search for a travel destination. Declaration of Dan Taylor, ¶4.

A typical example of plaintiff's literary work is its description of Wyoming:

In Wyoming you have blue skies, mountains, and rivers for miles. After learning what Wyoming can offer you, that's what you will be saying. Starting with the world-renowned Yellowstone National Park, there are an awesome amount of Wyoming attractions. Although the state is best known for Yellowstone Park, travelers can also experience an excellent array of historical museums, interesting tourist hotels, and some great tours and day trips.

Like many Wyoming vacations, you can begin in Yellowstone National Park, one of the most popular Wyoming attractions, and make your way over to Chevenne, the state's capital. Yellowstone National Park has over 2 million acres of unspoiled land and is home to some great National Monuments such as Old Faithful. The town of Cody Wyoming is nearby with its excellent selection of Cody hotels, a popular place for park-goers to stay during their vacations to Yellowstone.

No Wyoming travel guide would be complete with out a mention of Colonel Buffalo Bill Cody. Buffalo Bill is considered one of the founding fathers of Wyoming, and the city of Cody bears his name. Buffalo Bill was not only famous for his service to the United States Army, but also for the exciting road show he created, which played on the wild nature of the Old West. Buffalo Bill was beloved during his lifetime and has remained an icon of life in Wyoming and 19th century America.

The Cody Firearms Museum is the largest and most important representative of American arms, as well as European arms dating from the 16th century. Another great museum in the area is The Plains Indian Museum ranks as one of the nation's finest Native American collections. The museum presents art of Plains Indian and artifacts set in authentic Native American settings. This Wyoming travel guide museums tell the history of Cody Wyoming in an educational and exciting way.

Wyoming travel really heats up in the summer and cools down in the winter with Wyoming vacations that include skiing at fantastic locations like Jackson Hole. Jackson Hole is considered the premiere destination for skiing in the United States. The world famous Jackson Hole Ski Resort offers its services with private slopes and luxury accommodations.

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4 In the summer, you can experience the Daddy of them All, Frontier Days, found each year in the  
5 city of Cheyenne. Frontier Days is a week long festival of concerts, rodeos and Wild West  
6 entertainment. Thousands of loyal fans come to Wyoming to experience the Cheyenne Frontier  
7 Days. As the Frontier Days allow tourist and locals alike to experience traditions of the old west,  
8 Wyoming vacations can be authentic to the old west as well, with a stay at a working dude or  
9 guest ranch. You can rope steer, drive cattle, and test your limits or just be entertained.

10 When searching for a Wyoming travel guide there are many guided tour options as well. A  
11 professional will hike with you on and around the Grand Teton, or a master rafter will assist you  
12 on your journey down what the French refer to as the La maudite riviere enrage, or the Mad River.  
13 Wyoming vacations offer a lifetime of adventure and excitement all in one state. Travelers  
14 looking for even more activities in Wyoming can find information about tours and day trips in  
15 Wyoming or suggested itineraries for Wyoming.

16  
17 Upon information and belief, defendant copied this text verbatim on its web page for Wyoming,<sup>1</sup>  
18 placing it in the same page template used for all of its destination information pages. Defendant  
19 then repeated this process on at least 39<sup>2</sup> other pages.<sup>3</sup> In the course of doing so, defendant  
20 manually removed all hyperlinks in the text, generally these were links to other  
21 Destination360.com pages (shown in blue in the excerpt above), that appeared in all of the  
22 works. Defendant did not innocently or accidentally cut and paste text from a  
23 Destination360.com web site to a new page within its site; rather, it selected the descriptive text

24 <sup>1</sup> [http://conventions.net/destination\\_information/wyoming-s104.asp](http://conventions.net/destination_information/wyoming-s104.asp)

25 <sup>2</sup> Exhibit A, Declaration of Dan Taylor.

26 <sup>3</sup> A list of works known to plaintiff to have been copied and used by defendant as of this filing is attached  
27 as Exhibit A to the Declaration of Dan Taylor.

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3 on plaintiff's site from a page full of information and links, copied it, pasted it into a page  
4 template within an html editor, removed the interior hyperlinks, adjusted the page caption and  
5 other pro forma material to the name of the travel destination and then uploaded the final page to  
6 its web site. In short, defendant willfully went to a lot of trouble in order to add content to its  
7 own web site, create credibility for its business and increase its internet traffic and revenues.  
8 Indeed, without plaintiff Destination360's content, defendant's convention.net web site content  
9 about travel destinations is something of an empty shell, a series of page templates without  
10 substantive content.  
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14 9. Today and at all relevant times, the title, author, and copyright holder were conveyed in  
15 connection with plaintiff's works on its web site along with terms and conditions prohibiting  
16 unauthorized use of the photograph.<sup>4</sup>  
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19 10. Defendant Conventions.net describes itself as being "the world's leading online resource  
20 for Trade Shows, Conventions, Corporate Events and Conferences."<sup>5</sup> Whether it is, it generates  
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25 <sup>4</sup> <http://www.destination360.com/terms.php>

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4 revenues in part from internet advertising. commissions for hotel reservations and event ticket  
5 sales originating with its site and internet traffic<sup>6</sup>. Critical to this business model, as it is with  
6 Destination360 and many sites on the internet, is the amount of internet traffic coming to the  
7 site<sup>7</sup>. Upon information and belief, defendant attempted to misappropriate plaintiff's works in  
8 order to generate additional internet traffic to its site.  
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10 11. Upon information and belief, in the course of taking, altering and displaying the works on  
11 its resort reservations web page, defendant also knowingly and intentionally failed to identify  
12 either Destination360 as the author of a work or its copyright holder, violating the terms and  
13 conditions found on plaintiff's web site against such illicit use.  
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16 12. Studio360 submitted the work for registration on October 28, 2009.  
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23 <sup>5</sup> <http://www.conventions.net>

24 <sup>6</sup> It recently held a "text link sale" which, upon information and belief is the sale of "outbound text links"  
25 that help purchasers "move up the within the organic search rankings on Google." Taylor Decl., Exh. C

26 <sup>7</sup> Taylor Decl. ¶\_\_  
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CLAIM 1 – COPYRIGHT INFRINGEMENT

13. Plaintiff adopts by reference all prior paragraphs.

14. Plaintiff is the exclusive lawful owner of the copyrights to each work infringed by defendant. Each work has been submitted for registration with the United States Office of Copyright pursuant to 17 U.S.C.A. §§411.

15. Each infringed work was a wholly owned original literary work of plaintiff, entitled to protection from infringement under the copyright laws of the United States. There is not and never has been an authorized copy of any the works.<sup>8</sup>

16. Upon information and belief, defendant had access to and illegally copied the works.

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<sup>8</sup> Taylor Decl. at ¶3.

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4 17. Upon information and belief, defendant, with no lawful right whatsoever in the works,  
5 knowingly and willfully reproduced, prepared derivative works from and distributed copies and  
6 displayed the works and otherwise exploited and placed them into the stream of commerce for  
7 defendant's benefit and enrichment in violation of plaintiff's copyrights.  
8

9 18. Plaintiff's web page for Wyoming, the page mentioned above, clearly gives notice  
10 (highlighted on the exhibit for these purposes) of plaintiff's copyright in the literary work. Upon  
11 information and belief, defendant removed this notice, fraudulently intending to cause the reader  
12 to believe the copyright to the work was held by defendant in violation of 17 U.S.C.A. §506(d).  
13  
14

15 19. Upon information and belief, defendant created new web pages for each of plaintiff's  
16 works. On each such page, it placed a false copyright notice on each of these pages – "© 2009  
17 Conventions.net all rights reserved" - knowing the statement to be false. A copy of defendant's  
18 Wyoming web page, typical of all of the pages it created in order to use plaintiff's works and  
19 clearly showing the fraudulent notice, is attached as Exhibit B to the Declaration of Dan Taylor.  
20 Fraudulently intending to mislead readers into believing that it held copyright to the works is a  
21 violation of 17 U.S.C.A. §506(d).  
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CLAIM 3 – UNJUST ENRICHMENT

20. Plaintiff adopts by reference all prior paragraphs.

21. Upon information and belief, defendant has received and obtained substantial gains, advantages and benefits by using plaintiff's works for defendant's commercial purposes. To the extent defendant was saved the work of producing original content, defendant has been unjustly enriched.

22. To the extent defendant has exploited the works without compensating plaintiff, defendant has benefitted to the detriment of plaintiff. It would be unfair and inequitable for defendant to be able to retain such benefits without compensating plaintiff.

23. To the extent defendant has used the works without attributing them to plaintiff, defendant has gained credibility with an internet audience and benefitted by having substantially more assets on its web site. To the extent defendant has generated revenues from false credibility and increased site traffic, defendant has been unjustly enriched. It would be unfair and inequitable for defendant to be able to retain such benefits without compensating plaintiff.

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4 24. As a result of the unjust enrichment of defendant, plaintiff has incurred damages in an  
5 amount to be determined at trial, with interest. Defendant is liable to plaintiff for such unjust  
6 enrichment, gains, advantages, and benefits.  
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8 25. Because defendant's conduct was willful, intentional and in bad faith, plaintiff is entitled  
9 to punitive and exemplary damages.  
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12 CLAIM 4 – UNFAIR COMPETITION  
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14 26. Plaintiff adopts by reference all prior paragraphs.  
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16 27. Upon information and belief, in the course of taking plaintiff's works, defendant altered  
17 each of them by removing plaintiff's copyright notice, presenting the works without such  
18 notices, and removing hyperlinks to other of plaintiff's web pages. By its conduct, Defendant  
19 knowingly and willfully encouraged online visitors to defendant's web sites to believe defendant  
20 had authored the literary works, or had the lawful right to use and distribute them, thus deceiving  
21 the public and appropriating plaintiff's intellectual property for defendant's benefit.  
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4 28. Upon information and belief, by willfully using plaintiff's property without authorization,  
5 defendant unfairly received and obtained substantial gains, profits, advantages and benefits  
6 rightfully belonging to plaintiff.

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8 29. Such conduct constitutes unfair competition under Washington law at R.C.W. 19.86.020  
9 et seq.

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11 30. Plaintiff is entitled to recover from the defendants monetary damages as a result of the  
12 wrongful acts of defendant. Because defendants conduct was willful, intentional and in bad faith,  
13 Plaintiff is entitled to punitive and exemplary damages.

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15 CLAIM 5 – BREACH OF CONTRACT  
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17 31. Plaintiff adopts by reference all prior paragraphs.  
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3 32. Any user of plaintiff's web site agrees to the terms of use for the site by using the site.  
4 These terms of use include a prohibition against violating plaintiff's copyright to any materials  
5 on the site.<sup>9</sup>  
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7  
8 33. Defendant used plaintiff's web site and was subject to these terms of use. Defendant's  
9 unauthorized use of each of the literary works was a breach of these terms.  
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12 34. As a result of such breach of contract, plaintiff has suffered damages.  
13

14 DEMAND

15 Plaintiff demands:  
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17 35. As a result of defendant's copyright infringement, damages equal to its lost revenues,  
18 reduced advertising payments, other actual damages, diminishment of the value of the works and  
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22 <sup>9</sup> <http://www.destination360.com/terms.php>: "No material from any Web site owned, operated, licensed, or controlled  
23 by Studio360 may be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way,  
24 except that you may download one copy of the materials on any single computer for your personal, non-commercial  
25 home use only, provided you keep intact all copyright and other proprietary notices. Modification of the materials or  
26 use of the materials for any other purpose is a violation of Studio360's copyright and other proprietary rights. For  
27 purposes of these terms, the use of any such material on any other Web site or networked computer environment is  
28 prohibited."

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4 compensation for the use of each work pursuant to 17 U.S.C.A. §504(b) in an amount not less  
5 than \$100,000;

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7 36. an order be entered compelling defendant to account for all uses of the works and to  
8 account for all gains, profits and advantages derived by its infringement of plaintiff's copyrights;

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10 37. an order be entered restraining defendant from further using plaintiff's works pending  
11 judgment in this action;

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14 38. as a result of defendant's copyright infringement, plaintiff demands damages equal to  
15 defendant's profits pursuant to 17 U.S.C.A. §504(b);

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18 39. \$2,500 for each time defendant removed notice of copyright from one of plaintiff's works;

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20 40. \$2,500 for each time defendant placed its own purported notice of copyright on one of  
21 plaintiff's works;

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4 41. an order be entered compelling defendant to account for its financial gain, profits and  
5 advantages derived from its infringement of plaintiff's photograph;

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7 42. judgment against defendant for the unjust gains, profits and advantages defendant  
8 obtained in an amount not less than \$100,000;

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10 43. punitive damages as the court deems just for defendant's willful taking of plaintiff's  
11 property;

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14 44. judgment against defendant for such damages as plaintiff has sustained as a result of  
15 plaintiff's breach of contract;

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18 45. judgment be entered against defendant for its costs; and

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20 46. such other and further relief as the court finds just.

21  
22 November 18, 2009,

SIGNATURE OF ATTORNEY OF RECORD

23 Kevin Traywick 

24  
25 Kevin Traywick (WSBA No. 27927)  
Attorney for Plaintiff Studio360, Inc.

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